PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION E-3872**
November 19, 2004

R E S O L U T I O N

Resolution E-3872. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) filed tariffs to comply with D.04-02-024 regarding the affidavit required for direct access (DA) relocations/replacements. Approved with modifications.

By PG&E Advice Letter (AL) 2482-E and SDG&E AL 1579-E Filed on March 15, 2004 and SCE AL 1781-E Filed on March 17, 2004.

SUMMARY

We modify the affidavit required for Direct Access Customer Relocations and Replacements.

This resolution adopts modified declarations to be submitted by Electric Service Providers (ESPs) and customers to implement the rules for Direct Access (DA) relocations and replacements, as modified in D.04-02-024 and clarified in the DA Load Growth Policy Decision, D.04-07-025.

BACKGROUND

The Commission refined DA relocation and replacement rules to assure bundled customer indifference and DA customer flexibility.

Since the suspension of direct access (DA) as of September 20, 2001, we have adopted affidavits to confirm the compliance of ESPs and their customers with DA suspension rules designed to assure bundled customer indifference. One such affidavit is the DA Customer Relocation/Replacement Affidavit (Affidavit) to confirm compliance with the rules that apply when a DA load is relocated or replaced. The Affidavit consists of two parts, an ESP Declaration and a Customer Declaration.

Consistent with our dual criteria of bundled customer indifference and DA customer flexibility, in D.04-02-024, we

- Eliminated the requirement in the ESP Declaration that ESPs attest to the compliance of DA customers with DA load suspension rules; and
- Eliminated the requirement that a customer may relocate DA load to a new location only on a "one-for-one" or "account-by-account" basis, as long as the relocation does not cause the customer to exceed allowable load within each utility service territory.

PG&E, SCE, and SDG&E (collectively, the Utilities) filed ALs in compliance with D.04-02-024 to modify the Relocation Affidavit. In D.04-07-025, issued after the Utilities filed their advice letters, the benchmark for allowable load growth resulting from relocations and replacements was defined as the contractual load limitations provided in contracts covering eligible DA accounts (Principle 10 as discussed at p. 32 and adopted in that decision).[1]

NOTICE

Notice of PG&E AL 2482-E, SCE AL 1781-E, and SDG&E AL 1579-E was made by publication in the Commission's Daily Calendar. PG&E, SCE, and SDG&E state that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

Albertson's, the Alliance for Retail Energy Markets, and Energy Management Services protested the Utilities' ALs; parties have sought to resolve issues.

Albertson's Inc. and the Alliance for Retail Energy Markets (Joint Parties) protested the ALs on April 5, 2004. The Utilities replied jointly to the protest of the Joint Parties on April 12. Energy Management Services (EMS) protested SCE

1. These decisions build on several others, including D.02-03-055 dealing with DA suspension rules and D.03-04-057 granting an earlier petition of Albertson's, Inc. to modify D.02-03-055 to allow existing DA customers to add new locations or accounts to DA service, provided the additions cause no net increase in the amount of load served under DA as of September 20, 2001.

AL 1781-E on April 7, 2004. SCE submitted a joint utility reply to the protest of EMS on April 15. In an effort to resolve the few areas of disagreement remaining after the April 12, 2004 joint utility response, the Joint Parties suggested certain language changes by electronic mail sent to the Energy Division[2] on June 16. As reflected in this communication, the Utilities and the Joint Parties are very close to agreement on a majority of the outstanding issues.

The following is a more detailed summary of the major issues raised in the protests.

DISCUSSION

The DA Customer Relocation/Replacement affidavit is modified to reflect the policies adopted in D.04-02-024 and D.04-07-025.

In D.04-02-024, we modified rules applicable to the relocation and replacement of DA loads. In view of the DA load growth policy adopted in D.04-07-025, the proposed revised Relocation/Replacement Affidavit as filed in the Utility advice letters has the potential to create confusion about permissible DA load. Therefore, we adopt certain changes to the Affidavit, as explained in the sections below, to assure compliance with these decisions.

The Joint Parties contend in their protest that the definition of a "new facility/location" needs to be clarified, because the language dealing with acquisitions or new construction is unnecessarily limiting.

Paragraph 2 of the ESP Declaration and Paragraph 4 of the Customer Declaration

The Joint Parties believe that a DA customer should be permitted to designate another of its facilities that is not on DA to replace a facility that has been closed or returned to bundled service, so long as the customer's resulting load complies with allowable DA load growth from paragraph 5 of the Customer Declaration. The Joint Parties further object to the different means by which the Utilities would apply the definition of "new facility" to accounts relocated prior to issuance of D.04-02-024. Paragraph 2 of the proposed ESP Declaration and paragraph 4 of the proposed Customer Declaration contain a definition of the

2. Counsel for each of the utilities was copied on this email.

term "new location" that requires that the customer must have either refurbished its current location, "acquired" a new location, or "engaged in new construction" of a new location.

The Joint Parties suggest modifications to Paragraph 2 of the ESP Declaration and Paragraph 4 of the Customer Declaration to provide for a broader definition of a new location. The Joint Parties argue that this proposed change in language is fair to those customers that have relocated DA accounts while awaiting definitive Commission guidance on this topic.

The Utilities propose a transition period.

In response to the Joint Parties' protest, the Utilities state that the definition to which the Joint Parties object has been part of the Relocation Affidavit since it was developed in April 2003, as required by D.03-04-057, without protest or objection by any party until now. The Utilities further argue that relocation of an existing facility, by definition, involves closing an operation at a current location(s), and moving it to a new location(s) where the operation did not previously exist. Thus the Utilities argue that the Joint Parties' proposed changes would permanently create a definition of "new location" that would no longer limit the transfer of DA accounts to only relocated or replaced facilities. Instead, the revisions proposed by the Joint Parties would allow any existing site to be designated by the customer to replace the current location, which could lead to scenarios not intended by the Commission and not contemplated by D. 04-02-024.

While the Utilities oppose the Joint Parties' proposed changes, they acknowledge in their response that in some instances, customers were prohibited from relocating DA facilities and maintaining DA status at the relocated facilities due to circumstances beyond their control. Customers have approached the Utilities about DA facilities relocated after September 20, 2001 without submitting the Relocation Affidavit. These customers state that they were unable to submit Relocation/Replacement Affidavits for various reasons, including the refusal of ESPs to sign the version of the affidavit that existed prior to D.04-02-024. The Utilities caution that a solution developed for these customers could be misused and instead suggest that a "catch-up period" or a limited transition period would be appropriate.

The Utilities propose that customers be offered a transition period during which a customer that is closing a DA account can designate a facility which was established as a bundled service account after September 20, 2001 be relocated as a DA account. (The Utilities do not mention the situation where a DA account closed since September 20, 2001 might replace a bundled account also opened since that date.) The Utilities believe that allowing customers this transition period will permit those who may have missed the relocation opportunity the ability to now relocate such DA accounts, while restricting the potential for abuse. The Utilities propose that any transition period be limited to a short, one-time period (such as 60 days after the effective date of the Commission's resolution on this matter) to submit the Affidavit designating a non-DA account established after September 20, 2001 as a relocated DA account. Under the Utilities' proposal, after the transition period ends, all transfers of DA load must be on a "going forward" basis to newly established accounts, and the September 20, 2001 date will no longer have any significance for relocations.

We accept the Joint Parties' reply to the Utilities' responses to protests to facilitate resolution of issues.

The Joint Parties submitted a reply to the Utilities' responses to protests to Energy Division by email on June 16, 2004. Although such replies are not allowed under General Order 96-A, we accept the Joint Parties' reply in an effort to narrow issues. Joint parties stated in their June 16 email that the Utilities have gone far beyond the intent of the Commission with regard to the proposal that DA customers should be provided a one-time-only, limited 60-day period in which to designate that a facility which was established as a bundled service account after September 20, 2001 be relocated as a DA account. However, in a spirit of compromise, the Joint Parties suggest language to replace the contested definitions.

We adopt a Transition Period for closed accounts and allow customers to relocate/replace existing DA loads to newly acquired or constructed facilities within contractual load limitations.

We will adopt certain aspects of both the Utilities' and the Joint Parties' proposals. The criterion by which relocations should be evaluated is as set forth in Principle 10 adopted in D.04-07-025, OP 5. That principle provides that replacements and relocations shall be permitted as long as the customer's total DA load after a replacement or relocation does not exceed the contracted level of

DA load defined by the terms of customer's DA service contract entered into consistent with the Commission's DA suspension decisions. During the time since September 2001 while we developed DA suspension rules, DA customers have closed facilities and opened new ones without certainty as to DA eligibility. A transition period would offer customers the opportunity to relocate facilities on DA that they had to close or return to bundled service instead of relocating or replacing on DA service. Therefore, we will grant customers that missed the relocation opportunity a 60-day transition period to relocate/replace their DA accounts closed or returned to bundled service after September 20, 2001. Such customers shall be allowed to designate accounts on bundled service as replacements. For this purpose, we will require that replacement bundled service account(s) be limited to those opened after September 20, 2001.

DA relocation/replacement rules applicable to existing DA loads should facilitate sound business decisions.

For relocations/replacements not involving DA accounts closed or returned to bundled service in the past, we will allow transfers of DA load, in whole or in part, from one location to another newly acquired or reconstructed location or to reconstructed facilities at the same location. As discussed in the Comments Section, this date limitation is necessary to limit displacement of bundled service accounts by DA accounts. After the transition period, all relocations and replacements will involve DA accounts in existence at the time, e.g., not accounts previously closed or returned to bundled service). Within these time constraints, a DA customer will have the flexibility to locate its DA eligible loads to their best advantage with DA service, within the load limitations provided in its contract.

In D.04-02-024, we did not explicitly restrict DA relocations to "new facilities" but addressed situations such as a change in a customer's location (FOF 1, 2), and relocated and replacement facilities eligible to be treated as DA load (OPs 1, 2, COL 2). We found, "The process of relocation and/or replacement of existing load to different accounts must in no way be construed as a relaxation or compromise of our previously adopted DA suspension requirements." (FOF 5).

In keeping with our DA customer flexibility objective, DA relocation rules should not be implemented in a manner that unnecessarily impedes the business decisions of DA customers to replace or relocate facilities, within the DA suspension rules. The modifications adopted in D.04-02-024 were intended to assure that eligible DA accounts should retain their DA eligibility even when

relocated or replaced. The potential for abuse or unlawful increases in DA load that would frustrate our bundled customer indifference objective is not affected by when the customer acquired the facility or activated bundled service. But to provide greater assurance that relocations and replacements will not impair bundled customer indifference, we will require that after the transition period, they involve "new" facilities as defined in the proposed Affidavit.

Therefore, the Utilities shall revise the definition in Paragraph 2 of the ESP Declaration and paragraph 4 of the Customer Declaration to state:

> "New location" means either (1) the current location site or sites after the facilities have been refurbished, reconstructed, or remodeled or (2) a different site or sites from the current location(s) which has been newly acquired or constructed by customer, at which the customer intends to accommodate all or part of the relocated business and operations from the current location(s). A New Location may not include bundled service accounts which have been in the customer's name for more than ninety (90) days; provided, however, that for affidavits submitted during the sixty (60) day transition period after the effective date of Resolution E-3872, a customer may include bundled accounts acquired or constructed by the customer after September 20, 2001."

The Utilities shall inform DA customers of the 60-day transition period.

The Utilities shall issue letters to their DA customers 60 days from the effective date of this resolution, explaining the 60-day transition period to relocate DA accounts closed (or returned to bundled service) after September 20, 2001 by designating existing accounts on bundled service that were acquired or constructed after September 20, 2001 as replacements. The Utilities shall submit a draft of the DA customer letter to the Energy Division within 10 days of the effective date of this resolution.

Load growth from relocations/replacements is allowable if provided in contracts covering eligible DA accounts.
Paragraph 5 of the Customer Declaration

As noted previously, we adopted DA load growth policy in D.04-07-025 months after the Utilities filed their advice letters. As set forth in Principle 10 adopted in that decision (OP 5), replacements and relocations shall be permitted as long as

the customer's total DA load after a replacement or relocation does not exceed the contracted level of DA load defined by the terms of customer's DA service contract entered into consistent with the Commission's DA suspension decisions. Therefore, paragraph 5 of the Customer Declaration shall be modified to provide that the customer warrants its total DA load as a result of the replacement or relocation does not exceed the load limitations provided in its contract for DA service in place on September 20, 2001 and executed consistent with the Commission's DA suspension rules.

Relocation need not involve account closure.
Paragraph 7 of the Customer Declaration

Paragraph 7 of the Customer Declaration requires the customer to close its accounts at the current location if the new location is at a different site. The Joint Parties in their protest note that in practice, a DA customer can close its operations at a site and yet still need a minimal amount of electricity to power nighttime security lights or other minor miscellaneous uses, even though the facility is closed. The Joint Parties suggest that this remaining minor amount of usage could reasonably be required to transfer to bundled service and therefore suggest modification to that effect. EMS also protests the language in this paragraph. EMS' concern is that movement of load from one facility to another facility will not necessarily result in the closure of an account. EMS provides an example of an account with multiple facilities and end uses. "For instance, a package material supplier could make corrugated, bottles, and caps behind one "account," but could move production of corrugated to a new facility. Under this example, the corrugated facility would move, but no accounts would be closed, and eligible DA load would not increase." EMS also notes that facility installations and upgrades do not always start up as planned, causing a closure to be delayed. Finally, EMS suggests modified language reflecting these concerns.

In response to the Joint Parties, the Utilities acknowledge the potential for a customer to require minimal load at a closed facility for such purposes and recommend language to address this concern. The Utilities' recommended language would clarify that the account at the current location must be returned to bundled service and limited to minimal usage. The Utilities argue that these conditions are necessary to prevent a customer from claiming a relocation of a DA account, when actually moving DA status from one location to another. The Utilities in their response to EMS urge that we reject EMS' scenario where a

customer would keep a significant amount of load at the current location after a partial relocation/replacement. The Utilities argue that D.04-02-024 clearly requires a facility served as a DA account to be entirely relocated or replaced and did not contemplate partial relocations/replacements. The Utilities cite Conclusion of Law 2 and Ordering Paragraphs 3 and 4, which all refer to relocated and replacement facilities at the new location.

The concerns raised in protests are valid, as they reflect realities faced by customers. Accounts on DA service that are relocated need not be closed if they are returned to bundled service, regardless of the size of the bundled load. Again, our concern is to assure that the DA load, wherever it is located, does not exceed pre September 20, 2001 contracted amounts. In instances such as EMS raised where an account may be split when a part of the operations are relocated/replaced, the load growth policy adopted in D.04-07-025 might apply. Such customers may be required to submit the DA Customer Relocation/Replacement Affidavit, as well as the DA Load Growth Affidavit if the total DA load may increase as a result of the relocation. The point of paragraph 7 is to identify the customer's plans and hence the rules that apply. Therefore, we adopt the following language for Paragraph 7:

> "If the new location is at a different site from the current location, Customer agrees to (check one)
>
> ----- Close its accounts at current location on _____ [expected date].
>
> ----- Split the load on the account(s) at current location as follows. (Identify in the space below.)
>
> ----- Return its accounts at current location to bundled service on
>
> _____ [expected date].

A relocated/replaced account has continuous DA status only if each of the current account(s) it combines has continuous DA status.
Paragraph 8 of the Customer Declaration

Paragraph 8 deals with the issue of continuous DA status for the purpose of determining whether a relocation or replacement account is exempt from the

DWR components of the DA Cost Responsibility Surcharge (CRS). The Joint Parties recommend the paragraph be deleted, arguing that the language is problematic, because it is confusing and maintains the "account-by-account" requirement that D.04-02-024 eliminated. Also the language proposed in subparagraph B is interconnected with the DA load growth issue that is being concurrently considered in R.02-01-011. The Utilities disagree with the Joint Parties' proposal to delete Paragraph 8, arguing its purpose is to assure that a customer affirms it cannot maintain continuous DA status if it combines a continuous DA load with a non-continuous DA load and that the load at the new location(s) may not exceed the load at the current location(s).

Since the load growth issue is decided, it will instruct our revision of Paragraph 8. Principle 9 adopted in D.04-07-025 provides that continuous DA accounts (i.e., exempt from DA CRS) should continue to be exempt from DWR components of DA CRS for all load on the accounts.

We also note that Principle 1, which uses the contracted level of DA load as the criterion for permissible load growth, does not specify "non-continuous" DA accounts, as does the version of Principle 1 proposed by PG&E, SCE, and SDG&E on March 15, 2004. Therefore, we must conclude that the same criterion applies for determining permissible load growth on continuous and non-continuous DA accounts. In view of our policy adopted in D.04-07-025, we will modify Paragraph 8 of the Customer Declaration to read:

> "Customer understands that continuous direct access status pursuant to Ordering Paragraph 4 of CPUC Decision 02-11-022 (exemption from paying the DWR components of the DA Cost Responsibility Surcharge) will transfer to a relocation/replacement account only if each account at the current location(s) being combined for the relocation/replacement account qualifies for continuous DA service. If the customer elects to combine a number of accounts that do not all qualify as continuous DA, then the relocation/replacement account will not qualify as continuous DA."

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment

prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

Parties to the draft resolution (DR) have stipulated to reduce the 30-day waiting period. The draft resolution was mailed for comment under a shortened comment period. Comments were submitted timely on November 12, 2004 by PG&E and SDG&E Jointly (Joint Utilities), SCE, and Albertson's Inc., the Alliance for Retail Energy Markets and Wal-Mart Stores, Inc. (Joint Parties plus Wal-Mart). Joint Parties plus Wal-Mart endorsed the affidavit as written in the DR. SCE objects that the DR goes far beyond the direction in D.04-02-024 and must not be adopted without substantial modification. The Joint Utilities support adding flexibility to the DA relocation/replacement process but are concerned that the changes set forth in the DR would permit relocations/replacements that go beyond what was contemplated by the Commission in previous decisions and do not assure bundled customer indifference. The Joint Parties plus Wal-Mart submitted the only reply comments, which reflect some Joint Utility input.[3]

The Joint Utilities propose a revised Relocation/Replacement Affidavit incorporating the revisions proposed by the Joint Parties on June 16, 2004 and including language that permissible load means contracted load as provided on September 20, 2001 as determined by the Commission in D. 04-07-025. These revisions provide DA customers with a 60-day window to complete relocations and replacements stymied by uncertainty regarding the requirements for such moves in the wake of DA suspension. The proposed revisions also allow for additional flexibility for relocations and replacements of DA accounts. However, the Relocation/Replacement Affidavit proposed by the Joint Utilities does not go as far as the DR which would permit DA customers to transfer DA status from accounts closed or returned to bundled service since September 1, 2001 to accounts on bundled service since before September 20, 2001. Due to concern about impairment of bundled customer's indifference, the Joint Utilities urge the

3. The Joint Parties plus Wal-Mart Reply Comments state that the changes they proposed have been discussed on the date they were submitted with SDG&E and PG&E and worked on cooperatively. The utilities would need to seek final management and legal approval of the suggested changes to accept them formally.

Commission to adopt their proposed revised version of the Affidavit. The issues raised by the utilities are addressed in this section.

Bundled customer indifference could be impaired by unlimited relocation/replacement alternatives.

The Joint Utilities maintain that if the DR were adopted as drafted, the provisions of D.03-04-057 would be infringed, since the DR provides that the DA customer's contracted load as of September 20, 2001 could be deployed as the customer sees fit. The problem is that certain options allowed by the DR would lead to displacements of bundled accounts by DA accounts, which in turn would impair the bundled customers' indifference established and reinforced by Commission Decisions (D.)02-11-022, D.03-07-030 and D.04-07-025. The options that cause this concern are:

- Relocate DA eligibility from a former DA site closed after September 20, 2001 to an existing bundled service account(s), irrespective of bundled account establishment date; and
- Partially relocate load from existing DA site to an existing bundled location(s) irrespective of establishment date.

The Joint Utilities assert that even if the total DA load stays within the limits of the contracted amount, bundled customer indifference may be violated if bundled accounts get displaced by DA accounts. This is because, "the 15% load growth trigger mechanism established by D. 04-07-025 to ensure that bundled customer indifference is not affected by DA load growth, did not envision the proposed option of turning existing bundled accounts into DA accounts. Even if DA load does not grow beyond the 15% trigger, bundled customer indifference could be affected by this displacement of the bundled customer load. Thus, the DA CRS cap may become no longer sufficient to ensure bundled customers' indifference, but the trigger mechanism established by the Commission in its current form will not be sufficient to cause the review and needed adjustment of the DA CRS cap." (at p. 3).

SCE in its Comments also raises concern about the DR's allowing a DA account to relocate in whole or in part to an existing bundled account. SCE states that the "major problem with this new loophole is that many ESP/Customer contracts contain no quantifiable limits." (at p. 2). In support of its position, SCE provides an example in which a DA customer "relocates" the DA load from its one DA store into an unlimited number of locations (i.e., all 50 existing locations on

bundled service). Such relocation would be permissible so long as the load at all stores does not exceed its contractual limit -- which is a "full requirements" contract and therefore unlimited!" (at p. 3). SCE concludes that there is nothing in the DR that would prevent this situation.

SCE's conjecture that many DA contracts contain no quantifiable limits leads to the result that essentially no limit exists on the amount of potential DA load growth on existing DA accounts. This potential, combined with the DR's expansion of the definition of new location to include existing bundled service accounts, leads to SCE's conclusion that the DR would allow essentially unlimited DA load in California.

DA suspension rules have been developed to avoid impairing valid ESP contracts. These contracts are held by a finite number of customers and thus we can not assume that they will yield inordinate growth in DA load relative to bundled load, as long as certain limitations as discussed below are adopted to limit displacement of bundled service accounts by DA accounts.

Relocations/replacements after the transition period must involve newly acquired or constructed facilities; during the transition period, they may involve bundled accounts acquired or constructed after September 20, 2001.

The Joint Utilities support revising the current relocation/replacement structure to permit a DA customer to relocate part of its DA load to a new location, in keeping with Principle 10 in D.04-07-025. The Joint Utilities do not support the DR's proposed change to permit a partial relocation from an existing DA account to an existing bundled service account thereby changing the existing bundled account into a DA eligible account while the original account remains on DA as well. The Commission has already determined that a relocation or replacement involves making a new account eligible for DA. The Joint Utilities are concerned that relocation from DA accounts to existing bundled accounts will impair bundled customer indifference.

The Joint Parties plus Wal-Mart in their reply comments suggest a solution to limit displacement of bundled service accounts by DA accounts. The solution is to require that existing bundled accounts be designated for relocations only as part of the transition period. Further, for transition period relocations/replacements, the definition of New Location should be limited to sites acquired or constructed by customer subsequent to September 20, 2001.

After that, all relocations must involve new or newly constructed facilities and/or facilities at a location recently acquired with a brief (up to ninety days) period when the newly acquired facility might remain on bundled service until the necessary paperwork has been completed to move the account to DA service). This limitation is necessary to avoid displacing existing bundled accounts. SCE similarly suggests that if the Commission wants to provide DA customers the flexibility to split their DA load to relocated facilities, such relocations must be limited to new accounts with no existing bundled service usage.

The concerns raised by the utilities are valid, and the solution recommended by the Joint Parties plus Wal-Mart and SCE, as discussed, is reasonable. Therefore, we adopt it. These limitations should avoid problematic displacement of bundled accounts by DA accounts.

Allowing a transition period does not violate the Switching Order.

SCE objects to extending the transition period to accounts returned to bundled service (instead of being relocated/replaced with their DA status) since these accounts would have a three-year BPS commitment. SCE maintains that this provision in the DR violates D.03-05-034, the DA Switching Exemption Decision. D.03-05-034 required customers to elect whether to keep their DA-eligible accounts on DA service or switch them to the utility's Bundled Portfolio Service (BPS) for a minimum period of three years. The Commission concluded that "[i]n order to prevent arbitrage or similar potential activities, and to prevent cost shifting to bundled customers, it is reasonable to adopt restrictions on DA switching relating both to minimum term commitments and rates paid for bundled service." (D.03-05-034, COL #8). All the utilities were required to notify DA-eligible customers who were on ESP lists to provide them the opportunity to make an initial service selection for each of their DA-eligible accounts." (at p. 3).

Thus SCE argues that allowing customers to "relocate" accounts to DA service prior to the termination of their three-year BPS commitments would violate D.03-05-034. SCE's argument ignores the fact that until the Commission adopted the relocation/replacement rules, such bundled service accounts did not have the opportunity to retain their DA status. We allow such relocations/replacements, limited to the transition period, because this provision is necessary to provide equitable treatment for DA customers whose circumstances were such that they relocated/replaced facilities before these rules were implemented.

Finally, SCE argues that when DA is no longer advantageous, customers could return their accounts to bundled service. Thus, SCE concludes that the DR recreates the same problems of arbitrage and cost shifting to bundled service customers that D.03-05-034 was meant to prevent. SCE's argument fails to recognize the requirement in that order that customers must provide utilities advance notice prior to returning to bundled portfolio service so that utilities have time to adjust their procurement activities accordingly.

Paragraph 5 of the Affidavit is modified to cite pre-DA suspension contracts.

SCE notes that the language adopted in the DR for paragraph 5 of the Customer Declaration does not match the language agreed upon by all parties at the DA Load Growth Workshop on October 13, 2004. We will modify the DR to add the reference to the pre-September 20, 2001 contract. Otherwise, this language is similar to the language in Principle 10 adopted in D.04-07-025. If the Commission's final decision on the DA Load Growth Affidavit includes different language, then the DA Relocation Affidavit would be modified in accordance with the final decision.

Utilities issue letters in 60 days to inform DA customers of the rules adopted today but relocations/replacements may proceed with filed Affidavit.

Finally, The Joint Utilities recommend OP 4 be modified to allow the Utilities 60 (instead of 30) days from the effective date of this resolution to issue letters to their DA customers. The Utilities suggest the additional time so that the letters can be sent after the holiday season when customers are more likely to pay attention to such matters. The Joint Parties plus Wal-Mart in their reply comments agree that the draft Resolution should be modified to reflect this constructive suggestion. We appreciate this reasoning. Utilities shall send out the letters 60 days after the effective date of this resolution. However, the utilities, having filed their Supplemental ALs, shall inform any customer requesting a relocation/replacement about the provisions adopted in this resolution and allow the customer to proceed in the meantime with such relocations/replacements consistent with these provisions. The 60-day transition period shall begin on the date of the letter informing customers of these provisions.

FINDINGS

1. D.04-02-024 modified the rules governing relocation and replacement of Direct Access (DA) loads.
2. To comply with D.04-02-024, on March 15, 2004, PG&E filed Advice Letter (AL) 2482-E, and SDG&E filed AL 1579-E; on March 17, 2004, SCE filed AL 1781-E. The Joint Parties and EMS protested the advice letters.
3. On July 16, 2004, the Commission issued D.04-07-025, determining that permissible DA relocations/replacements must not result in a customer's total DA load exceeding contractual load limitations provided in contracts covering eligible DA accounts. Consistent with the policy adopted in that decision as Principle 1, the permissible load growth criterion is not exclusively applicable to non-continuous accounts.
4. The Customer and Electric Service Provider (ESP) Declarations (together, the Affidavit) proposed by the Utilities in their ALs require modification to comply with the policies adopted in D.04-02-024 and D.04-07-025.
5. The Relocation/Replacement Affidavit is designed to protect DA customer flexibility within the constraints necessary to achieve bundled customer indifference.
6. A 60-day transition period is necessary to provide for equitable treatment of Customers that have had to close DA accounts or return them to bundled service since September 20, 2001 instead of relocating/replacing them as DA accounts for reasons beyond their control.
7. For relocations/replacements not involving DA accounts closed or returned to bundled service in the past, customers shall be permitted to transfer DA load in whole or in part from one location to another newly acquired or constructed location(s).
8. Protests to the Utilities' advice letters are resolved as described herein.

THEREFORE IT IS ORDERED THAT:

1. The proposed Relocation/Replacement Affidavits filed by PG&E in AL 2482-E, SCE in AL 1781-E, and SDG&E in AL 1579-E are approved as modified herein.
2. The Utilities shall modify the Relocation/Replacement Affidavit as follows:

a. The definition in Paragraph 2 of the ESP Declaration and paragraph 4 of the Customer Declaration shall state:

"New location" means either (1) the current location site or sites after the facilities have been refurbished, reconstructed, or remodeled or (2) a different site or sites from the current location(s) which has been newly acquired or constructed by customer, at which the customer intends to accommodate all or part of the relocated business and operations from the current location(s). A New Location may not include bundled service accounts which have been in the customer's name for more than ninety (90) days; provided, however, that for affidavits submitted during the sixty (60) day transition period after the effective date of Resolution E-3872, a customer may include bundled accounts acquired or constructed by the customer after September 20, 2001."

b. Paragraph 5 of the Customer Declaration shall be modified to provide:

"Customer warrants its total DA load as a result of the replacement or relocation does not exceed the load limitations provided in its contract for DA service in place on September 20, 2001 and executed consistent with the Commission's DA suspension rules."

c. Paragraph 7 of the Customer Declaration shall be modified to read:

"If the new location is at a different site from the current location, Customer agrees to (check one)

----- Close its accounts at current location on _____[expected date].

----- Split the load on the account(s) at current location as follows. (Identify in the space below.)

----- Return its accounts at current location to bundled service on _____ [Expected date].

d. Paragraph 8 of the Customer Declaration shall be modified to read:

"Customer understands that continuous direct access status pursuant to Ordering Paragraph 4 of CPUC Decision 02-11-022 (exemption from paying the DWR components of the DA Cost Responsibility Surcharge) will transfer to a relocation/replacement account only if each account at the current location(s) being combined for the relocation/replacement account qualifies for continuous DA service. If the customer elects to combine a number of accounts that do not all qualify as continuous DA, then the relocation/replacement account will not qualify as continuous DA."

3. For relocations/replacements not involving DA accounts closed or returned to bundled service in the past, customers shall be permitted to transfer DA load in whole or in part from one location to another newly acquired or constructed location(s).

4. The Utilities shall issue letters to their DA customers 60 days from the effective date of this resolution, explaining the 60-day transition period to relocate/replace DA accounts closed or returned to bundled service since September 20, 2001 by designating bundled service account(s) opened after September 20, 2001 as replacements. The utilities shall submit a draft of the DA customer letter to the Energy Division within 10 days of the effective date of this resolution.
5. Within 10 days of the effective date of this resolution, the Utilities shall supplement their advice letters so that they conform to the requirements of this resolution. The supplemental advice letters shall be effective today, subject to Energy Division's determining that they comply with this Order.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 19, 2004; the following Commissioners voting favorably thereon:

_____
STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I will file a dissent.
/s/ CARL W. WOOD
Commissioner

I reserve the right to file a dissent.
/s/ LORETTA M. LYNCH
Commissioner